



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0242; FRL-9912-86-Region 5]

Approval and Promulgation of Air Quality Implementation Plans;

Wisconsin; Proposed Approval of Revisions to PSD Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on March 12, 2014, for parallel processing. The submittal modifies Wisconsin's Prevention of Significant Deterioration (PSD) program to identify precursors for particulate matter of less than 2.5 micrometers (PM_{2.5}), includes the significant emissions rates for PM_{2.5} and revises its definitions of PM_{2.5} emissions and emissions of particulate matter of less than 10 micrometers (PM₁₀). WDNR requested these revisions to address disapprovals of two submissions meant to address requirements of the 2008 Implementation of New Source Review (NSR) Program for PM_{2.5} and to address a partial disapproval, under section 110 of the Clean Air Act (CAA), of what is commonly referred to as an "infrastructure" SIP. EPA is proposing approval of Wisconsin's March 12, 2014, SIP revision

because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and applicable EPA regulations regarding PSD.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0242, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: damico.genevieve@epa.gov.
3. Fax: (312)385-5501.
4. Mail: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2014-0242. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312)353-6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6058, Morgan.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Is the Background for This Proposed Action?
- III. Wisconsin's Submittal for Parallel Processing
- IV. What Is EPA's Analysis of Wisconsin's Proposed SIP Revision?
- V. What Action Is EPA Taking?
- VI. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

- 1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- 2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- 3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- 4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline.

II. What Is the Background for This Proposed Action?

In May 2008, EPA finalized regulations to implement the NSR Implementation Rule for PM_{2.5} in the PSD and Nonattainment NSR (NNSR) programs (2008 PM_{2.5} NSR Rule). The regulation included the creation of the major source threshold, significant emissions rate and offset ratios for PM_{2.5} and the identification of PM_{2.5} precursors. Additionally, the rule required states to consider emissions which may condense to form particulate matter at ambient temperatures, known as condensables, in permitting decisions by January 1, 2011.

WDNR submitted revisions to its PSD and NNSR programs that were intended to address the 2008 PM_{2.5} NSR Rule in October 2010. On October 29, 2012, EPA finalized a narrow disapproval of provisions of Wisconsin's infrastructure SIP submittal that were

intended to identify precursors to $PM_{2.5}$ and identify $PM_{2.5}$ and PM_{10} condensables (see 77 FR 65478), because the submittal lacked specific references to condensables for $PM_{2.5}$ and PM_{10} for applicability determinations and permitting emissions limits, consistent with the 2008 NSR Rule.

On May 12, 2011, and on March 5, 2012, WDNR submitted revisions to its SIP to comply with the 2008 $PM_{2.5}$ NSR Rule. On July 25, 2013, EPA finalized disapproval of Wisconsin's submissions because the submissions did not explicitly define the precursors of $PM_{2.5}$, nor did they contain the prescribed language to ensure that condensables are to be regulated within the $PM_{2.5}$ and PM_{10} emission limits in Wisconsin's PSD and NNSR programs. (see 78 FR 44881)

The infrastructure SIP requirements contained in sections 110(a)(1) and (2) of the CAA are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. States are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS).

Under section 110(a)(2)(C), states are required to include a program for the regulation of construction of new or modified

stationary sources to meet new NSR requirements under the PSD and NNSR programs, and EPA evaluates, in determining whether states have satisfied these requirements, the following:

(i) provisions that explicitly identify oxides of nitrogen (NO_x) as a precursor to ozone in the PSD program; (ii) identification of precursors to PM_{2.5} and the identification of PM_{2.5} and PM₁₀ condensables in the PSD program; (iii) PM_{2.5} increments in the PSD program; and, (iv) greenhouse gas permitting and the "Tailoring Rule." This section also requires states to demonstrate that their existing SIPs meet current EPA requirements with respect to the NSR program. For example, states must adopt definitions that are identical to, or more stringent than, EPA's definitions. Of the structural PSD elements in the context of infrastructure SIPs, today's rulemaking only addresses Wisconsin's satisfaction of provisions that explicitly identify precursors to PM_{2.5}, and the identification of PM_{2.5} and PM₁₀ condensables.

The final disapproval of the submission to address the 2008 PM_{2.5} NSR Rule and the final partial disapproval of the infrastructure SIP triggered the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the effective dates of the disapprovals, unless the state corrects the deficiencies and the

Administrator approves the plan or plan revision before the Administrator promulgates such FIP.

III. Wisconsin's Submittal for Parallel Processing

On March 12, 2014, WDNR submitted a draft SIP revision request to EPA to revise portions of its PSD and NNSR programs to address deficiencies identified in EPA's previous partial infrastructure SIP disapproval. On April 15, 2014, WDNR submitted a supplement to its request with additional information to support its submittal. Since the rules WDNR submitted on March 12, 2014, are consistent with the Federal PSD rules, final approval of this SIP revision will resolve the deficiencies previously identified by EPA in its October 29, 2012, partial disapproval and July 25, 2013, disapproval. Wisconsin submitted revisions to its rules NR 400, 405, and 408 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revised rules into Wisconsin's SIP: (1) NR 400.02(123m) and (124); (2) NR 405.02(21)(b)5.a. and b. and 6; (3) NR 405.02(25i)(a), (ag) and (ar); (4) 405.02(27)(a)5m; and (5) NR 408.02(20)(e) 5.a and b. and 6. At this time EPA is only proposing to take action on the portions that pertain to the identification of precursors to PM_{2.5} and identification of PM_{2.5} and PM₁₀ condensables. Specifically, today's proposed rulemaking is limited to the following

provisions: (1) NR 400.02(123m) and (124); (2) NR 405.02(25i)(ag); (3) NR 405.02(25i)(ar)2. and 3.; and, (4) 405.02(27)(a)5m. EPA proposed approval of the remainder of WDNR's submission as it pertains to NO_x as a precursor to ozone and the definition of major modification in a May 2, 2014 proposed approval (79 FR 25063).

Because portions of this draft SIP revision are not yet state-effective, Wisconsin requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before concluding its rulemaking process. EPA reviews this proposed state action and prepares a proposed rulemaking action. EPA publishes this proposed rulemaking in the Federal Register and solicits public comment in approximately the same timeframe during which the state finalizes its rulemaking process.

After Wisconsin submits the formal state-effective SIP revision request, EPA will prepare a final rulemaking action for the SIP revision. If changes are made to the SIP revision after EPA's proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to repropose the action.

IV. What Is EPA's Analysis of Wisconsin's Proposed SIP Revision?

EPA has evaluated WDNR's proposed revision to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. The revisions described in section III above are intended to update the Wisconsin SIP to comply with the current rules and address deficiencies identified by EPA in its previous SIP disapprovals. As discussed below, EPA is proposing to approve these revisions because they meet Federal requirements.

The 2008 PM_{2.5} NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM_{2.5} and other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for PSD permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursors. In the 2008 PM_{2.5} NSR Rule, EPA identified precursors to PM_{2.5} for the PSD program to be sulfur dioxide (SO₂) and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 PM_{2.5} NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to PM_{2.5} in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA

demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM_{2.5} concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM_{2.5}, the 2008 PM_{2.5} NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM_{2.5} to mean the following emissions rates: 10 tons per year (tpy) of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). WDNR has revised the definition of "regulated NSR air contaminant" for the PSD program in 405.02(25i)(ar)2. and 3., consistent with EPA's own PSD regulations. WDNR has also revised its PSD significant emission rates to include PM_{2.5} and its precursors in NR 405.02(27)(a)5m, consistent with EPA's PSD regulations.

The 2008 PM_{2.5} NSR Rule did not require states to immediately account for gases that could condense to form particulate

matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in PSD permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). WDNR's revisions, specifically at NR 400.02(123m) and (124) and NR 405.02(25i)(ag), are consistent with the PSD requirements obligated by the 2008 $PM_{2.5}$ NSR Rule as they relate to $PM_{2.5}$ and PM_{10} condensables.

The 2008 $PM_{2.5}$ NSR Rule also codified requirements for $PM_{2.5}$ in the NNSR program. When WDNR initially submitted revisions to its SIP meant to address the 2008 $PM_{2.5}$ NSR Rule, the Milwaukee-Racine area was designated as nonattainment for the 2006 $PM_{2.5}$ 24-hour NAAQS, and WDNR submitted rules pertaining to NNSR in addition to PSD. Thus, EPA's disapproval of this submission created an obligation for WDNR to address the deficiencies identified in both the PSD and NNSR programs. On April 22, 2014, EPA finalized approval of Wisconsin's request to redesignate the Milwaukee-Racine $PM_{2.5}$ area to attainment for the 2006 $PM_{2.5}$ 24-hour NAAQS. As a result there are no areas designated as nonattainment for $PM_{2.5}$ located in Wisconsin. Since

there are no areas designated as nonattainment for PM_{2.5} in Wisconsin, Wisconsin is no longer obligated to submit a NNSR plan for PM_{2.5} and there is no longer a FIP obligation for nonattainment NSR. Should an area be designated as nonattainment for PM_{2.5}, Wisconsin will be required to revise its rules to include a plan to address PM_{2.5} in NNSR.

Wisconsin's requested revisions are consistent with the applicable requirements found in Federal regulations; therefore EPA is proposing to approve the requested revisions.

V. What Action Is EPA Taking?

EPA is proposing to approve the revisions to Wisconsin rules NR 400, and NR 405 submitted by the State on March 12, 2014, and April 15, 2014, for approval into the SIP. The revisions submitted, described in section III, above, are consistent with Federal regulations governing state permitting programs. See section IV, above. EPA is also soliciting comment on this proposed approval. If EPA finalizes this proposed approval of WDNR's requested revisions, the FIP clocks started by EPA's October 29, 2012, narrow disapproval and July 25, 2013, disapproval will stop.

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and

applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides.

Dated: June 17, 2014.

Susan Hedman,
Regional Administrator, Region 5.

[FR Doc. 2014-15284 Filed 06/27/2014 at 8:45 am; Publication
Date: 06/30/2014]